

T. Armstrong
Proc 1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8995

FILE: B-193192

DATE: January 29, 1979

MATTER OF: Fraser-Volpe Corporation

DLG 00764

DIGEST:

[Protest concerning

Propriety of agency's exercising option instead of conducting new competition] must be viewed in light of applicable provisions of DAR. An option should be exercised only if it is most advantageous method of fulfilling Government's needs, price and other factors considered. When exercise by Government of option in existing contract is challenged, GAO will not object to agency's determination unless it finds that provisions of DAR were not followed or that determination itself was unreasonable.

Fraser-Volpe Corporation (Fraser-Volpe) protests the exercise of an option for 38 additional Automatic Lead Computing Sights M61 (Sights) by the United States Army Armament Materiel Readiness Command (ARRCOM) on August 31, 1978, under contract DAAA09-77-A-2000-0027 with the General Electric Company (GE). Fraser-Volpe contends that it should have been afforded the opportunity to participate in a competitive procurement for the Sights.

Contract DAAA09-77-A-2000-0027 was awarded to GE on June 2, 1978, on a sole-source basis for the design, development and manufacture of M61 Sights. The parties agreed on a ceiling price of \$600,000 for the delivery of 30 Sights. However, the contract contained an option clause which would allow the Government to order an additional quantity, up to 45 Sights, at a ceiling price of \$20,000 each. By message dated August 31, 1978, the contracting officer issued an order against the option provision for 38 additional Sights. Fraser-Volpe protests this action.

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ARRCOM justified its decision to exercise the option in its contract with GE on the basis of the nonavailability of a competitive technical data package, the lack of a qualified second source and the current stock position. ARRCOM had expressed an intent to procure any additional Sights, beyond the 30 originally ordered from GE, on a competitive basis. Prior to the exercise of the option, ARRCOM had been corresponding with Fraser-Volpe about the possibility of a competitive procurement of additional Sights. At the time it was decided to take advantage of the option clause, ARRCOM was in the process of incorporating and integrating Fraser-Volpe's Military Specification, MIL-S-60661, into the M61 Sight Technical Data Package, which would allow for a competitive procurement.

On August 18, 1978, 38 additional Sights were requisitioned. Because current stock on hand plus procurement due-in would be depleted by July 1979, expeditious action on this requirement was requested. Not having a complete data package necessary for competitive procurement, exercise of the option was regarded as the most advantageous method to the Government. This action would minimize disruptions in the stock position and, since the option could be exercised prior to negotiations to finalize the price of the basic contract, would allow the Government to realize the benefits of negotiating a larger quantity at one negotiation table. (Negotiations to finalize the price were scheduled to begin in September 1978.)

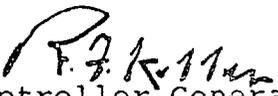
Fraser-Volpe contends that these Sights should have been procured competitively and that it should have been allowed to compete for this procurement. It is under contract with the Republic of Korea to produce 600 Sights it claims to be of identical configuration. As a result, it has generated a military specification, MIL-S-60661, for the M61 Sight. This specification has been submitted to ARRCOM. Thus, Fraser-Volpe argues that a technical data package adequate for competition does exist.

The propriety of an agency's exercising an option in an existing contract instead of conducting a new competition must be viewed in light of the applicable provisions of the Defense Acquisition Regulation (DAR). An option should be exercised only if it is determined

that this is the most advantageous method of fulfilling the Government's needs, price and other factors considered. DAR § 1-1505(c)(iii) (DPC 76-6 January 31, 1977). Our Office will not object to the agency's determination to exercise the option unless we find that the provisions of DAR were not followed or that the determination itself was unreasonable. Oscar Holmes & Sons, Inc. et al., B-183897, November 21, 1975, 75-2 CPD 339. The requirements for exercising an option are set out at DAR § 1-1505. We do not find any deviation by ARRCOM from the appropriate procedures.

We also do not find ARRCOM's determination to exercise the option to be unreasonable. The only point in contention here is the availability of a technical data package adequate for a competitive procurement. At issue is the reasonableness of ARRCOM's position that the data package is incomplete. One factor which can be considered in determining whether to exercise an option is the Government's need for continuity of operations. DAR § 1-1505(e). Because of the urgencies due to its stock position, ARRCOM was required to forego a competitive procurement in favor of exercising the option. While Fraser-Volpe produces similar sights for Korea, its military specification had not been fully evaluated by ARRCOM. At the time the option was exercised, ARRCOM was in the process of examining these specifications in order to formulate a technical data package which could be used for competitive procurements. Dynamic performance, acceptability criteria, acceptability test requirements and verification requirements still had to be established. We have consistently held that where the legitimate needs of the Government can only be satisfied by a single source, the Government is not required to compromise those needs in order to obtain competition. See, e.g., Julian A. McDermott Corporation, B-191468, September 21, 1978, 78-2 CPD 214. In view of the time available to ARRCOM, its determination to exercise the option is reasonable.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States